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ABSTRACT

Designed to assist charter school developers and operators, this question-and-answer publication provides general information that covers a broad range of federal civil rights issues related to public charter schools. Sections of the document discuss: (1) the growth of public charter schools and federal agencies that oversee charter schools; (2) responsibilities for civil rights compliance; (3) recruitment and admissions and nondiscrimination; (4) schools affected by desegregation plans or court orders; (5) selection of facilities to provide access to students with disabilities; (6) educating students with limited-English proficiency, federal funds available to help educate students with limited-English proficiency, and parental information requirements; and (7) educating students with disabilities, the rights of students with disabilities to a free, appropriate public education, federal funds that are available to help meet obligations to educate students with disabilities, protections under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act 1997, and least restrictive environment placement requirements. The document closes with a list of U.S. Department of Education Office for Civil Rights Enforcement Offices. (Contains 30 references.) (CR)

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ED 443 233

APPLYING FEDERAL CIVIL RIGHTS LAWS TO PUBLIC CHARTER SCHOOLS

QUESTIONS AND ANSWERS

As part of the U.S. Department of Education's (ED's) and the U.S. Department of Justice's (DOJ's) efforts to support innovation and choice within the public school system, this publication provides important information on how public charter schools may be developed and operated consistent with federal nondiscrimination laws. The purpose of this publication is to answer civil rights-related questions that charter school developers and operators have raised.

The civil rights principles that apply to charter schools are the same principles that apply to all public schools. This publication contains no new law. Rather, it is designed to assist charter school developers and operators by making available a summary of civil rights issues applicable to public schools.

This publication provides general information that covers a broad range of federal civil rights issues. It does not seek to answer every question that may arise. In many cases, answers will turn on the particular facts of a given situation. In others, the law regarding the issue is evolving. Finally, other state or local civil rights requirements or other federal laws may apply.

For additional information, we encourage you to contact ED's Office for Civil Rights (OCR) or visit OCR's Web site at http://www.ed.gov/offices/OCR/. A list of the addresses and telephone numbers of OCR offices is attached. DOJ contributed significantly to this document by preparing the portions where DOJ is featured. Contact information for DOJ and for other federal offices is included where appropriate. OCR and DOJ can provide technical assistance. Early consultation can help you understand and meet these requirements.

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Office for Civil Rights
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Table of Contents

BACKGROUND 1

RESPONSIBILITIES FOR CIVIL RIGHTS COMPLIANCE 3

RECRUITMENT AND ADMISSIONS 5

SCHOOLS AFFECTED BY DESEGREGATION PLANS OR COURT ORDERS 8

SELECTION OF FACILITIES TO PROVIDE ACCESS TO STUDENTS WITH DISABILITIES 12

EDUCATING STUDENTS WHO ARE LIMITED-ENGLISH PROFICIENT 14

EDUCATING STUDENTS WITH DISABILITIES 16

ENDNOTES 19

BACKGROUND

One of the fastest growing areas of public school reform is the charter schools movement. Charter schools are public schools under contract – or charter – between a public agency and groups of parents, teachers, community leaders, or others who want to create alternatives and choice within the public school system. Charter schools create choice for parents and students within the public school system, while providing a system of accountability for student achievement. Charter schools also encourage innovation and provide opportunities for parents to play powerful roles in shaping and supporting the education of their children. As a result, charter schools can spur healthy competition to improve public education.

In exchange for increased accountability, charter schools are given expanded flexibility with respect to select statutory and regulatory requirements. Federal legislation provides support for the creation of charter schools as a means of promoting choice and innovation within public school systems. Of course, charter schools, like all public schools and other recipients of federal financial assistance, must operate consistent with civil rights laws.

The U.S. Department of Education (ED), Office for Civil Rights (OCR) enforces a number of civil rights laws that apply to public schools, including charter schools. These laws include: Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs; Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination on the basis of disability; and the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. These laws apply to programs and activities that receive federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability by public entities, including public schools. Title II applies to public entities, regardless of whether they receive federal financial assistance. OCR receives and resolves more than 5,000 complaints of discrimination each year and provides technical assistance on a wide range of issues.

In addition, the U.S. Department of Justice, Civil Rights Division (CRD) works on a variety of legal issues involving elementary and secondary schools. DOJ enforces in the courts many of the same statutes that OCR enforces administratively, including Title VI, Title IX, Section 504, and Title II. DOJ also enforces Title IV and Title VII of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974. DOJ may intervene in private suits that allege violations of education-related anti-discrimination statutes and the Fourteenth Amendment of the U.S. Constitution. CRD is also responsible for monitoring more than 400 school districts currently covered by

desegregation court orders in over 200 desegregation cases where the United States is a party.

ED and DOJ support the implementation of charter schools as a valuable way to enhance choice among public schools and to give more students the opportunity to learn to challenging standards. This guidance seeks to aid charter school developers and operators in their efforts to plan, develop, and deliver their important educational programs in a nondiscriminatory manner.

To avoid distraction within this guidance, we have often used acronyms and abbreviations to substitute for the names of agencies and multiword concepts. The meaning of each is explained within the context. For your convenience, we also include the following key to the acronyms and abbreviation you will find in this publication.

CRD – Civil Rights Division, U.S. Department of Justice
DOJ – U.S. Department of Justice
ED – U.S. Department of Education
FAPE – Free appropriate public education
IDEA – Individuals with Disabilities Education Act
LEA – Local Educational Agency
LEP – National-origin minority, limited-English proficient
OBEMLA – Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education
OCR – Office for Civil Rights, U.S. Department of Education
OSEP – Office of Special Education Programs, U.S. Department of Education
OSERS – Office of Special Education and Rehabilitative Services, U.S. Department of Education
SEA – State Educational Agency
Section 504 - Section 504 of the Rehabilitation Act of 1973
Title II – Title II of the Americans with Disabilities Act of 1990
Title VI – Title VI of the Civil Rights Act of 1964
Title IX – Title IX of the Education Amendments of 1972

RESPONSIBILITIES FOR CIVIL RIGHTS COMPLIANCE

Perhaps the most common image associated with education is the relationship between a child and his or her teacher. Of course, public education is that and more. It includes shared responsibility by many entities, including the school, the school district, and the state, acting in cooperation with parents. In much the same way, the responsibility for safeguarding the civil rights of the students, parents, and teachers in a public school, such as your charter school, is shared and does not fall exclusively on any one individual or agency.

1. Who is responsible for making sure that my charter school is complying with federal civil rights laws?

Public schools, including your charter school, are responsible for complying with several federal civil rights laws, based on their status as recipients of federal financial assistance and as public entities. Other entities share responsibility for your school's compliance. If your charter school is part of a Local Educational Agency (LEA), such as a school district, the LEA is also responsible for ensuring that your school is complying. Furthermore, if your charter school receives federal funds through the State Educational Agency (SEA) or an authorized public chartering agency that receives federal funds, or is chartered by the SEA or its designee, the SEA is also responsible. The SEA is responsible in all cases for having methods of administration that are not discriminatory, including procedures for chartering schools.

Sources of federal education funds include programs authorized under the Elementary and Secondary Education Act of 1965, as amended, including the Public Charter Schools Program.

2. In general, what are the federal civil rights obligations that apply to public elementary or secondary schools, including my charterheol?

Public schools, including charter schools, must not discriminate on the basis of race, color, national origin, sex, or disability in any of their programs or activities. The primary federal civil rights laws addressed in this publication include:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

Other applicable federal civil rights laws not directly addressed in this publication include:

- *Age Discrimination Act of 1975;*
- *Title IV of the Civil Rights Act of 1964;*
- *Title VII of the Civil Rights Act of 1964; and*
- *Equal Educational Opportunities Act of 1974.*

RECRUITMENT AND ADMISSIONS

Students attend charter schools by choice, but their admission might be subject to certain qualifications or selection procedures, including a lottery. This is one factor that may distinguish the operation of your charter school from many other public schools. Although your civil rights obligations are no different from those of other public school officials, the fact that your students are not simply assigned to attend your charter school underscores your need to be mindful of the rights of children and parents in your community when publicizing your school to attract students and when evaluating their applications for admission.

3. Do I have any responsibility regarding the recruitment of students in order to be in compliance with federal civil rights laws?

Yes. When announcing your charter school or conducting outreach, you may not discriminate against students of a particular race, color, or national origin, or against students with disabilities. If your charter school is co-educational, then you may not discriminate in recruitment on the basis of sex. If your charter school recruits students, you should recruit them from all segments of the community served by the school, including students with disabilities and students of all races, colors, and national origins. Also, you may target additional recruitment efforts toward groups that you believe might otherwise have limited opportunities to participate in your program.

Title IX allows single-sex programs, classes, and schools under certain conditions. For more information, see Question 9.

4. What steps should I take when providing outreach information to parents who are limited-English proficient?

You must make sure that parents in your community who are not proficient in English have the opportunity to understand the outreach information provided to other parents. This information may need to be provided in a language other than English. For example, if outreach materials are made available to parents, you should provide the content of the materials to parents who do not understand English in a manner and form they understand. If you conduct public informational meetings with parents or community groups, you should make sure that limited-English proficient parents who can be reasonably expected to attend have a meaningful opportunity to understand what is being presented.

5. What steps should I take when providing outreach information to parents with disabilities?

You must make sure that a parent with a disability has a meaningful opportunity to understand the outreach information given about the charter school as effectively as other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication with disabled parents. For example, if outreach materials are made available to parents, you need to make sure that parents with disabilities have appropriate access to the content of the materials. If requested, you may need to provide the materials using alternative formats, such as Braille, large print, or audio cassette. If you conduct public informational meetings with parents or community groups, those meetings must be physically accessible to individuals with disabilities. Qualified interpreters or another effective means of communication must be provided if requested.

6. What is my obligation to make sure that all students regardless of race, color, or nationabrigin– are treated in a nondiscriminatory manner in admissions?

You may not discriminate on the basis of race, color, or national origin in determining whether an applicant satisfies any admissions requirements. Students with limited-English proficiency must have the opportunity to meet any appropriate minimum eligibility criterion for admission, consistent with the mission of the charter school. Eligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. If such criteria have a disparate impact on the basis of race, color, or national origin, then the criteria should be examined to ensure that they are educationally justified and that no alternative criteria exist that would equally serve your goals and have a lesser disparate impact. It is important to understand that disparities alone do not constitute discrimination under Federal law. For more information and technical assistance, contact the OCR office that serves your state.

For schools receiving funds under the federal Public Charter School Program, see the discussion on establishing minimum eligibility criteria for admission and other important information in Public Charter Schools Program: Non-Regulatory Guidance at http://www.uscharterschools.org/res_dirir es_primary/fed_gud_pcsp.htm.

If your charter school receives funds under the federal Public Charter Schools Program, you must use a lottery to admit students if the charter school is oversubscribed.

7. May my charter school consider race in admissions decisions?

A charter school may take race into account in making admissions decisions in limited circumstances. Race may be used only in a narrowly-tailored way to meet a compelling interest, such as to remedy discrimination, to promote the educational benefits of diversity, or to reduce minority-group isolation. The state of the law in this area is undergoing close examination by the courts. The legal standard that applies to your state may vary, depending on State law and the federal circuit in which your state is located.

For more information and technical assistance concerning the use of race in admissions, contact the OCR Office that serves your state and see, for example, the Federal Register notices on the Magnet Schools Assistance Program application notice, at http://www.ed.gov/legislation/FedRegister/announcements/1998-1/021798c.html.

8. What is my obligation to make sure that student applicants with disabilities are treated in a nondiscriminatory manner in admissions?

Under Section 504 and Title II, you may not categorically deny admission to students on the basis of disability. For example, you may not deny admission to a student with a disability solely because of that student's need for special education or related aids and services. Students with disabilities must have the opportunity to meet any appropriate minimum eligibility criterion for admission, consistent with the mission of the charter school and civil rights requirements.

For more information on civil rights requirements regarding the educational needs of students with disabilities, see Questions 23 to 30 concerning Educating Students with Disabilities.

9. Does Title IX permit single-sex classes, programs, or schools?

An exemption in Title IX permits LEAs to establish single-sex elementary or secondary schools as long as they are not vocational schools. However, when an LEA establishes a public school for one sex – unless it is necessary to remedy discrimination – any student excluded based on sex must have made available comparable courses, services, and facilities, pursuant to the same policies and criteria of admissions.

If you are thinking of establishing a single-sex class, program, or school, we encourage you to contact your LEA and the OCR office that serves your state for more guidance. ED is reviewing its Title IX regulation pertaining to single-sex programs and schools.

The Title IX regulation generally prohibits single-sex classes or programs in co-educational schools. There are some exceptions, including contact sports, chorus, and portions of classes dealing with human sexuality. Separate classes may also be provided for pregnant students, but participation must be voluntary. Title IX also allows for single-sex classes and programs if they are necessary to remedy discrimination found by a court or OCR, or as a response to conditions that have limited participation by sex.

SCHOOLS AFFECTED BY DESEGREGATION PLANS OR COURT ORDERS

Some school districts have desegregation obligations under plans or court orders that could affect or be affected by the establishment of your charter school, even if your charter school is its own LEA. Typically, desegregation plans and court orders are resolutions of past segregative discrimination by school districts determined by OCR or by the courts, in some instances with the participation of the U.S. Department of Justice, Civil Rights Division (CRD). If the jurisdiction in which your charter school is located is under a desegregation plan or order, there are steps you can take to ensure compliance and avoid unnecessary delays.

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10. How do I determine whether my proposed charter school is in a jurisdiction with a duty to desegregate?

If you are uncertain whether your charter school is in a jurisdiction that is covered by an existing desegregation plan or court order, you may contact several entities for assistance. First, to determine if there is an applicable court order where the United States is a party to the case, you may contact the appropriate LEA, your SEA, or CRD. To assist you in this process, CRD has provided your chief state school officer with a list of the LEAs in the state that are subject to such a court order. Second, to determine if there is an applicable OCR Title VI desegregation plan, you may contact the appropriate LEA or the OCR office that serves your state.

If you have questions about a desegregation court order where the United States is a party to the case, you may contact CRD at 202-514-4092. If you have questions about a Title VI desegregation plan, you may contact the OCR office that serves your state. A list of OCR offices is attached.

You should also know that there are other desegregation plans and orders that do not involve CRD or OCR. These desegregation plans and orders only involve private parties in state or federal courts, or state agencies that have ordered districts to desegregate.

In some states and school districts there may also be other obligations under state or local laws or policies, such as those to promote integration or diversity, that could affect or be affected by your charter school. In these cases, you should consult your SEA or the appropriate LEA to determine whether the jurisdiction has a desegregation obligation.

11. What steps should my LEA or I take in order to establish a school that complies with an existing desegregation plan or court order?

The establishment of any new public school, including a new charter school, in a jurisdiction with a duty to desegregate must be consistent with the LEA's obligations under its desegregation plan or court order. Alternatively, it is possible to seek a modification of the applicable plan or order. If you are establishing a charter school in a jurisdiction that is under an OCR Title VI desegregation plan, OCR should be consulted on any applicable Title VI obligations. Similarly, CRD should be contacted if you are establishing a charter school in a jurisdiction under a desegregation court order in which the United States is a party to the case. You, the appropriate LEA, or your chartering authority may contact these agencies. Early consultation will speed the process for your charter school proposal and can avoid unnecessary delay or disruption in the future. Review of any new school by a court or OCR involves a case-by-case, fact-bound determination that takes into account the particular charter school's impact on the ability of the appropriate LEA to comply with its unique desegregation obligations.

12. What information is needed for this consultation process to be effective?

As a first step, you should provide a copy of the charter school application to either OCR or CRD. In general, OCR and CRD are interested in the effect a new public school will have on the appropriate LEA's obligations. Your charter application will contain at least some of the information needed to make this determination, such as those items listed below.

Because charter school applications vary from state to state, and because each court order and OCR Title VI desegregation plan is different, CRD or OCR may need more information than is included in your charter application. The information below is especially helpful to CRD or OCR in evaluating the impact of your school on the LEA's desegregation obligations, although additional information may be necessary:

- theme and target population;
- recruitment and admissions processes;
- proposed location;
- enrollment capacity of the school;
- projected racial composition of students, faculty, and staff for the coming school year; and
- impact on racial composition of students at other schools in the LEA.

13. In the case of a court order, what does CRD do with this information?

If your jurisdiction is under a desegregation court order where the United States is a party to the case, you should consult with CRD. When CRD receives information on your charter school, it will review your submission, its own files, and any other readily available information to see if these sources provide enough data to reach a position about the charter school's impact on compliance with the desegregation order. If more information is needed, CRD will contact you and the appropriate LEA to request the additional information.

When an LEA is subject to a desegregation court order, it is the court, not DOJ, that determines whether or not to approve a new school. Where approval is required, the court will ask the other parties to the case, including DOJ, for their views.

In many cases, the limited number of students enrolled in a charter school does not have a significant impact on the attendance patterns and enrollment in the appropriate LEA's other schools, and does not adversely affect compliance with the desegregation order. In such cases, and in other cases where CRD concludes there is no adverse impact, CRD will advise you and the appropriate LEA that it has no objection to the proposed operation of the charter school.

If CRD's review of the information raises concerns about compliance with the desegregation order, CRD may offer suggestions and modifications that address these concerns, where appropriate.

14. Who is responsible for notifying the court about a new charter school to obtain court approval when required?

If your jurisdiction is under a desegregation court order, the appropriate LEA may need to have the court approve any new school, including a charter school. Where court approval is required, charter school developers should contact their LEA or SEA for information on how best to obtain the approval of the court. Where appropriate, CRD may be able to make a joint motion with a charter school or LEA to seek court approval for a new charter school. However, CRD can not represent charter school developers before the court, and can not submit motions on their behalf.

15. In the case of a desegregation plan, what does OCR do with this information?

If your jurisdiction is under an OCR desegregation plan, you should consult with the OCR office that serves your state. After OCR receives information on your charter school, we promptly examine it along with the Title VI desegregation plan and any other readily available information to determine if establishing the new school would be consistent with the appropriate LEA's

Title VI obligations. If OCR needs more information, we will contact you and the appropriate LEA. In many cases, a charter school does not adversely affect compliance with the OCR Title VI desegregation plan because the limited number of students enrolled has a minimal effect on the attendance patterns and enrollment in the LEA's other schools. In such cases, and in other cases where OCR concludes there is no adverse impact, OCR will advise you and the appropriate LEA that it has no objection to the proposed operation of the charter school.

If OCR's review of the information raises concerns about compliance with the LEA's Title VI obligations, OCR may offer suggestions and modifications that address these concerns, where appropriate.

SELECTION OF FACILITIES TO PROVIDE ACCESS TO STUDENTS WITH DISABILITIES

For some people with physical disabilities, an otherwise outstanding program may as well not exist if it is located in an inaccessible facility. Section 504 and Title II require that persons with disabilities have access to the programs and activities offered at public schools. Because charter schools often open in older buildings that may lack attention to accessible design or in contemporary or renovated buildings that were not originally designed for use as public schools, it is important that you be aware of these requirements.

16. Are there requirements for physical access that apply when I select the facilities that will house my charter school?

Yes. An LEA (including your charter school if it is its own LEA) may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

The program accessibility requirements of Section 504 and Title II often involve complex issues. For technical assistance regarding accessible programs and facilities, please contact the OCR Office that serves your state.

17. Are there different legal requirements that apply to charter schools located in existing facilitieas compared to newer facilities?

Yes. For existing facilities, a charter school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. Both the Section 504 and Title II regulations permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility.

For new construction and alterations, Section 504 and Title II require that a new or altered facility (or the part that is new or altered) must be readily accessible to and usable by individuals with disabilities. The focus here is on providing physical access to buildings and facilities in addition to programs and activities. This means you must make sure that a child with a physical disability has access to every part of the new building or the parts that are newly-altered.

For example, if your charter school is in a new building, all parts of the building, including the third-floor chemistry labs, must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location like the first floor.

18. How do I know if a building is considered an existing facility or new construction?

Any building or alteration by or on behalf of your LEA or your charter school for which construction began since June 1977, is considered new. Any construction or alteration that was not done by or on behalf of your LEA or charter school is likely to be considered an existing facility, regardless of its age.

Any construction that began before June 4, 1977, is considered existing. Any construction or alteration by or on behalf of your LEA or charter school that began after January 26, 1992, is considered new. Construction that began on or between those two dates is new under Section 504 and existing under Title II. In these cases, the more stringent standard for new construction would apply.

19. What should I consider when acquiring the space in which I operate my program?

In summary, when you purchase, take title to, lease, or rent a facility, you are encouraged to look for the most accessible space available. At a minimum, you must make sure that the educational program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, in accordance with the requirements for existing facilities. Construction or alteration initiated by you or for your charter school must also meet standards for new construction.

EDUCATING STUDENTS WHO ARE LIMITED-ENGLISH PROFICIENT

A growing number of students in the public school population are national-origin minority students who are limited-English proficient (LEP). These children include recent immigrants to the United States, and other children raised with languages other than English. Generally, these children's limited ability to speak, read, write, and understand English well enough to participate meaningfully is a barrier to their educational success. Federal civil rights law requires that public schools provide LEP children appropriate services designed to teach them English and the general curriculum.

20. What civil rights requirements apply if there are LEP students attending my charter school?

In *Lau v. Nichols*, the U.S. Supreme Court held that school districts must take affirmative steps to help LEP students overcome language barriers so that they can participate meaningfully in each school district's programs. Under Title VI, public schools and LEAs must identify LEP students and provide them educational services so they can learn English-language skills and acquire the knowledge and skills in academic content areas that all students are required to know.

Public schools are not required to adopt any particular model of instruction for LEP students. However, where a program is necessary to ensure equal educational opportunity for LEP students, it must be based on a sound educational theory, adequately supported with qualified staff and adequate resources so that the program has a reasonable chance for success, and periodically evaluated and revised, if necessary.

21. Are there federal funds available to help me educate LEP students?

Yes. A wide variety of resources are available to help you serve your charter school's LEP students. In addition to receiving general educational funds and state and local funds appropriated for the education of LEP students, LEAs may qualify for Federal financial assistance. For example, like any public school, your charter school might qualify for funds from Title I, Title VII, or other titles of the Elementary and Secondary Education Act of 1965, as amended. These grant funds may be used to supplement the services that the LEA is required to provide using state and local educational funds. Title I is administered by ED's Office of Elementary and Secondary Education (OESE). There are specific requirements that you must meet in order to receive Title I funds. Contact your SEA to find out if your charter school is eligible for these funds. LEAs may apply for Title VII funds from ED's Office of Bilingual Education and Minority Languages Affairs (OBEMLA).

Title I provides assistance to at-risk children in high-poverty schools. For further information on Title I, visit OESE's World Wide Web site at http://www.ed.gov/offices/OESE/CEP/index.html. Title VII helps LEAs meet their needs and objectives related to improving the instruction of LEP students. For further information on Title VII, visit OBEMLA's Web site at http://www.ed.gov/offices/OBEMLA/.

Your charter school might also join with other charter schools or work with LEAs to share qualified staff and other resources. Keep in mind that the obligation to educate LEP students is the same regardless of whether special funds or resources are available.

22. What must I do to make sure that limited English proficient parents of students in my school are provided with information about school activities?

Like operators of other public schools, you must ensure that language-minority parents who are not proficient in English receive the same information provided to other parents, in a manner and form they understand. This may include information about their children's program, progress, and disciplinary problems, as well as information about the school's rules, policies, and activities. This information may have to be provided in a language other than English for parents who are not proficient in English.

You may find assistance through real-time interpreting services, such as those provided by telecommunications companies.

EDUCATING STUDENTS WITH DISABILITIES

Some children arrive at school with disabilities that affect their participation in the educational program. Sometimes, these disabilities are known; sometimes they remain hidden until a parent or teacher raises a concern. The challenge for all public schools is to identify children with disabilities, assess their individual needs, and provide appropriate educational services without undue delay.

23. What civil rights requirements apply to my charter school for the education of students with disabilities?

Under Section 504 and Title II, students with disabilities enrolled in public schools, including your charter school, are entitled to a free appropriate public education (FAPE). The Section 504 regulation includes several substantive and procedural requirements regarding the provision of FAPE. Among these requirements is that a student with a disability must receive appropriate regular or special education and related aids and services. The requirement is designed so that the individual educational needs of the disabled student are met as adequately as the needs of nondisabled students.

24. Are there federal funds available to help me meet my obligation to educate students with disabilities?

Yes. Your charter school might benefit from federal funds available under the Individuals with Disabilities Education Act (IDEA). The IDEA is a federal law that provides funds to SEAs, and through them to LEAs, to help schools serve students with disabilities. There are specific requirements of the IDEA that you must meet in order to receive these federal funds. Contact your SEA to find out if these funds are available to you.

For further information on the IDEA and its requirements, contact OSERS' Office of Special Education Programs (OSEP) at 202-205-5507; or visit OSEP's World Wide Web site at http://www.ed.gov/offices/OSERS/OSEP/index.html.

Like Section 504 and Title II, the IDEA has FAPE requirements. In general, if you satisfy the FAPE requirements under the IDEA, then you will be in compliance with the FAPE requirements of Section 504 and Title II. The IDEA, which has distinct requirements that are not discussed in detail in this publication, is administered by ED's Office of Special Education and Rehabilitative Services (OSERS).

25. Are there additional ways to help me meet my obligations under Section 504 and Title II?

Yes. In addition to providing federal funds to eligible entities, the IDEA allows a state the flexibility to designate some other entity as responsible for ensuring that the requirements of the IDEA are met for children with disabilities enrolled in public schools. Where you are meeting your charter school's Section 504 and Title II FAPE responsibilities through compliance with IDEA requirements, the IDEA's flexibility could help you meet your charter school's Section 504 and Title II FAPE responsibilities. Generally, if a state designates another entity as responsible for ensuring that all of the IDEA requirements are met for eligible disabled children enrolled in a particular charter school, that designated entity would ensure that FAPE is provided to each of those students, generally at the charter school site.

Contact your SEA to learn whether your state makes this flexibility available to your charter school.

26. Could a child be prtected by Section 504 and Title II but not be eligible to receive services under the IDEA?

Yes. Some students with disabilities are protected by Section 504 and Title II, but are not eligible to receive services under the IDEA because they do not need special education. One example would be a child with juvenile rheumatoid arthritis who requires the periodic administration of medication during the school day, but who does not need any special education services. The child may have the right to FAPE under Section 504 and Title II, even though the child is not eligible for services under the IDEA.

Under Section 504 and Title II, an individual with a disability is an individual who either has a physical or mental impairment that substantially limits one or more major life activities (such as learning), has a record of such an impairment, or is regarded as having such an impairment.

27. May I limit the participation of students with disabilities to certain aspects of my charter school's program?

No. Consistent with civil rights requirements, students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities. This includes an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

28. Is a student with a disability required to be educated with students without disabilities?

A student with a disability must be educated with nondisabled students to the maximum extent appropriate for the disabled student. The education of students with disabilities must be designed to meet their individual needs. A student with a disability may be placed in a setting outside the regular classroom only if the regular educational environment – including using supplementary aids and services – cannot satisfactorily meet the student's educational needs. The group making placement decisions is responsible for selecting the setting that satisfies these requirements.

The Section 504 regulation requires that any placement decision be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

29. What do I need to do when a student enrolled in my charter school is believed to have a disability?

When a student is believed to have a disability, your charter school, like any public school, must initiate the procedures established by your SEA or by your LEA (if your charter school is a part of the LEA) to identify and refer the student for evaluation in a timely manner.

30. What other rights and responsibilities are included in the provision of FAPE regarding student identification, evaluation, and placement?

Under Section 504 and Title II, students with disabilities, and their parents or guardians, are entitled to due process from the LEA concerning student identification, evaluation, and placement. Simply stated, due process is procedural fairness. In the context of FAPE, due process includes notice, the opportunity for review of records, the right to request an impartial hearing with representation by counsel, and a procedure for review. In general, by complying with the relevant IDEA procedural-safeguard requirements, an LEA is complying with these Section 504 and Title II requirements.

ENDNOTES

The information provided in this document discussed the application of federal civil rights laws to charter schools. As stated above, the document discusses the application of existing law, and does not set forth new law. These same civil rights laws apply to all public schools, including charter schools. The following endnotes provide citations and background information to the major points addressed in this document. Numbers correspond to the answers in this document. These endnotes are not meant to be an exhaustive list of existing regulations or case law, but a brief, helpful summary and restatement of relevant federal civil rights laws. If you have further questions, please contact the OCR office that serves your state. A list of OCR offices is attached.

RESPONSIBILITIES FOR CIVIL RIGHTS COMPLIANCE

1. The federal civil rights laws and the implementing regulations that OCR enforces include: 42 U.S.C. § 2000d *et seq.*, 34 C.F.R. Part 100 (1999) (Title VI); 29 U.S.C. § 1681 *et seq.*, 34 C.F.R. Part 106 (1999) (Title IX); 29 U.S.C. § 794 *et seq.*, 34 C.F.R. Part 104 (1999) (Section 504); 42 U.S.C. § 12101 *et seq.*, 28 C.F.R. part 35 (1999) (Title II); 42 U.S.C. § 6101 *et seq.*, 45 C.F.R. Part 90 (1999) (Age Discrimination Act). (All subsequent citations in this document from the Code of Federal Regulations (C.F.R) are also from the 1999 edition.)

2. There are other federal civil rights statutes that apply to public schools, which are not addressed in this publication. These include, but are not limited to:

   - Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000b *et seq.*, which authorizes the Attorney General to institute civil actions alleging discrimination on the basis of race, color, sex, religion or national origin by public elementary and secondary schools and public institutions of higher learning.
   - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, which prohibits employment practices that discriminate on the grounds of race, sex, religion, and national origin.
   - The Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 *et seq.*, which prohibits specific discriminatory conduct, including segregating students on the basis of race, color or national origin, and discrimination against faculty and staff. The EEOA also requires school districts to take action to overcome students' language barriers that impede equal participation in educational programs.

RECRUITMENT AND ADMISSIONS

3. For regulations that generally address nondiscrimination in recruitment, see: 34 C.F.R. § 100.3(b); 34 C.F.R. § 106.23; 34 C.F.R. §106.36; 28 C.F.R. § 35.130; 34 C.F.R. § 104.4(b). For regulations which govern targeted recruitment, see: 34 C.F.R. § 100.3(b) (6) (i) (ii); 34 C.F.R. § 106.3 (a)-(b); 34 C.F.R. § 104.6(a)-(b); 45 C.F.R. § 90.49.

4. For documents supporting outreach to limited-English proficient parents, see: Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11595 (1970) (hereinafter OCR 1970 memorandum) (requires adequate notice to LEP parents of school activities); Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency (9/27/91) (hereinafter OCR 1991 memorandum) at 8 (discussing notification to parents of LEP students in specialized programs). OCR's policy on the requirements for LEP students are encompassed in three documents: the 2 documents listed above along with The Office for Civil Rights' Title VI Language Minority Compliance Procedures (initially issued 12/3/85, reissued without change 4/6/90). These three documents should be read together and are available through your OCR office.

5. For regulations related to outreach for parents with disabilities, see: 28 C.F.R. § 35.160; 28 C.F.R. § 35.104 (1)-(2). See also 34 C.F.R. § 104.4(b).

6. For regulations regarding non-discriminatory treatment in admissions, regardless of race, color and national origin, see: 34 C.F.R. § 100.3(b) (1) (v); 34 C.F.R. § 100.3(b) (2). Also read Guardian's Association v. Civil Service Commission, 463 U.S. 582 (1983) (holding disparate impact standard as valid). Many courts use the term "equally effective" (see, for example, Georgia State Conf. of Branches of NAACP v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985)) and "comparably effective" (see, for example, Elston v. Talladega County Bd. of Educ. , 997 F.2d 1394, 1407 (11th Cir. 1993)) when discussing whether alternative criteria serve the educational goals; the courts appear to use the terms synonymously. Also helpful is 34 C.F.R. 100, Appendix B, part K (Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs). For admissions requirements concerning LEP students, see OCR 1991 memorandum at pages 8-9 (LEP students cannot be categorically excluded from specialized programs unless the particular program requires proficiency in English for meaningful participation).

7. The list of cases discussing the use of race is lengthy. For the general principles regarding the use of race, see, for example, Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995) (holding that use of race must serve a compelling legal interest and be narrowly tailored to serve that interest). Elimination of discrimination is a compelling government interest that can justify race-conscious measures. See, for example, United States v. Fordice, 505 U.S. 717 (1992). The Supreme Court and other courts have recognized other compelling interests. See, for example, Regents of University of California v. Bakke, 438 U.S. 265, 311-14 (1978) (opinion of Powell, J.) (Promotion of educational benefits of diverse student body furthers a compelling state interest justifying use of race in university admissions). See, for example, Wittmer v. Peters, 87 F.3d 916, 919 (7th Cir. 1997), cert. denied, 117 S. Ct. 949 (1997) (finding a compelling interest in the use of use of race in maintaining the integrity of correctional facility's boot camp program). But see, for example, Hopwood v. State of Texas, 78 F.3d 932, 944-948 (5th Cir.), cert. denied, 518 U.S. 1033 (1996) (University interest in attaining diverse student body does not constitute a compelling governmental interest to justify use of race in law student selection). Other courts have assumed for the sake of argument that diversity is a compelling legal interest, but struck down the use of race in admissions on the grounds that the specific policy challenged was not narrowly tailored to meet the diversity interest. See, for example, Wessmann v. Gittens, 160 F.3d 790, 795-799 (1st Cir. 1998).

   Congress has also recognized that the elimination of racial isolation has significant benefits. See 20 U.S.C. §§ 7201-7213 (Magnet School Assistance Program). For additional helpful background information on this topic, see: Adarand Memorandum to General Counsels from Assistant Attorney General Walter Dellinger (6/28/95); 34 C.F.R. § 100.3(b) (6) (i) and (ii); 59 Fed. Reg. 8756 (02/23/1994) (Title VI and applicability to financial aid); Bakke Notice, 44 Fed. Reg. 58509 (10/10/79).

8. The regulations related to admissions of students with disabilities include: 34 C.F.R. § 104.4(a)-(b); 28 C.F.R. § 35.130(a); 28 C.F.R. § 35.104 (1)-(2).

9. The regulations that address single-sex courses, activities, programs and schools are: 34 C.F.R. § 106.34 (single-sex courses); 34 C.F.R. § 106.35 (single-sex schools); 34 C.F.R. § 106.3(a)-(b) (single-sex activities/programs). The Supreme Court has also addressed the legality of single-sex institutions. See, for example, United States v. Virginia, 518 U.S. 515, 531 (1996) (parties who seek to defend gender-based government action must demonstrate an "exceedingly persuasive justification").

SCHOOLS AFFECTED BY DESEGREGATION PLANS OR COURT ORDERS

10. For a discussion of de jure segregation in public schools, see generally, for

example, Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1 (1971); Green v. County School Board of New Kent County, 391 U.S. 430 (1968); Brown v. Board of Education, 347 U.S. 483 (1954). See also: 34 C.F.R. § 100.4 (c) (2) (OCR plans); 34 C.F.R. § 100.4(c) (1) (court orders). To examine more recent Supreme Court school desegregation cases, in particular unitary status, see, for example, Jenkins v. Missouri, 515 U.S. 70 (1995); Freeman v. Pitts, 503 U.S. 467 (1992); Board of Education of Oklahoma City v. Dowell, 498 U.S. 237 (1991).

If a charter school is its own LEA, it still could affect a desegregation plan or court order. Two Supreme Court cases which provide support are: Wright v. Council of Emporia, 407 U.S. 451, 460-462 (1972) (Even if there is no discriminatory intent, a new school district could not be created if its effect would be to impede progress of dismantling the existing dual system); United States v. Scotland Neck City Bd. of Ed., 407 U.S. 484 (1972) (Whether action affecting dismantling of dual school system is by legislature or school district is immaterial, criterion is whether the dismantling of dual system is furthered or hindered).

11. For cases dealing specifically with charter schools and school desegregation, see, for example, Berry v. School District of the City of Benton Harbor, 56 F.Supp.2d 866, 872 (W.D. Mich 1999) (holding charter school has same burdens as other public schools in district subject to court's remedial order); Beaufort County Board of Education v. Lighthouse Charter School et. al., 516 S.E.2d 655, 659 (S.C. 1999) (holding valid a school board finding that charter school applicant failed to adhere to same remedial requirements as other public schools in the district under OCR Title VI desegregation plan); Davis v. East Baton Rouge Parish School Board, et al, C.A. No. 56-1662 (M.D. La. 1999) (stating that charter schools in district remain subject to court's orders relating to desegregation of district). Courts are guided by the general principle established in Wright and Scotland Neck, both discussed in note 10.

12. As stated before, it is the effect of the action, not the intent, that determines whether new schools comply with school desegregation decrees. See: Wright and Scotland Neck, both discussed in note 10. For more discussion on how charter schools can meet school desegregation requirements, see, for example, Benton Harbor, discussed in note 11 (court approved a charter school since it provided sufficient information; ordered it to undertake recruitment steps that would guarantee a population to approximate racial characteristics of district). Generally, see also: 34 C.F.R. § 100.3(b) (2); 34 C.F.R. § 100.3(b) (3).

13. See the endnote discussing the answer to question 12.

14. See the endnotes discussing the answers to questions 10-12.

15. See the endnote discussing the answer to question 12.

SELECTION OF FACILITIES TO PROVIDE ACCESS TO STUDENTS WITH DISABILITIES

16. For requirements involving physical accessibility to schools, see: 34 C.F.R. § 104.21; 28 C.F.R. § 35.149.

17. For regulations involving existing facilities as opposed to new facilities, see: 34 C.F.R. §§ 104.22-23; 28 C.F.R. §§ 35.150-151. For additional background information, see: Uniform Federal Accessibility Standards; Americans with Disabilities Act Accessibility Guidelines; American National Standards Institute A117.1-1961 (R1971).

18. The regulations that distinguish new facilities from existing ones are: 34 C.F.R. § 104.23 (c); 28 C.F.R. § 35.151.

19. To assist you in choosing the space where you operate your charter school, you should read: 34 C.F.R. §§ 104.21-23; 28 C.F.R. §§ 35.149-151.

EDUCATING STUDENTS WHO ARE LIMITED-ENGLISH PROFICIENT

20. The legal support for taking affirmative steps in educating LEP students are: Lau v. Nichols, 414 U.S. 563 (1974); 34 C.F.R. § 100.3(b) (2); OCR 1970 memorandum (35 Fed. Reg. 11595, 07/18/70) (cited with approval in Lau). For the legal standard regarding the instructional program for LEP students, see: Casteneda v. Pickard, 648 F.2d 989, 1009-1010 (5th Cir. 1981) (decided under EEOA framework and applied in OCR Title VI analysis, OCR 1991 Memorandum at 12-15).

21. The relevant statute is the Improving America's Schools Act of 1994, P.L. 103-382 (10/20/94), 108 Stat. 3518. 20 U.S.C. § 6301-6514 (Title I); 20 U.S.C. § 7401-7602. (Title VII).

22. The OCR 1970 memorandum, set out more fully in note 4, specifically addresses this issue. See also 34 C.F.R. § 100.3(b) (2).

EDUCATING STUDENTS WITH DISABILITIES

23. For regulations dealing with the civil rights requirements of providing a free appropriate public education, read: 34 C.F.R. § 104.33; 28 C.F.R. § 35.130(b) (1) (iv).

24. The regulations of the IDEA are at: 34 C.F.R. Part 300. If a school satisfies the FAPE requirement under IDEA, it is in compliance with FAPE under 504 and Title II. See: 34 C.F.R. § 300.13; 34 C.F.R. § 104.33(b) (2).

25. The regulation discussing the flexibility of IDEA is 34 C.F.R. § 300.312.

26. For discussion of how a student could be protected under Section 504 and Title II, but not be eligible for IDEA services, see in general: 34 C.F.R. § 104.3(k) (2); 34 C.F.R. § 300.7. The definition of a person with a disability can be found at 34 C.F.R. § 104.3(j); 28 C.F.R. § 35.104.

27. For discussion of participation of students with disabilities in nonacademic services, see: 34 C.F.R. § 104.37; 34 C.F.R. § 104.34(b).

28. The regulations addressing the educational placement of students with disabilities are: 34 C.F.R. § 104.4(b) (2); 34 C.F.R. § 104.34(a).

29. The regulation that addresses when a student is believed to have a disability is 34 C.F.R. § 104.35(a).

30. Other rights and responsibilities included in the provision of FAPE are discussed at 34 C.F.R. § 104.36.

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